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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,189

09/29/2005

Falko Skrabal

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04/30/2007

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EXAMINER

NATNITHITHADHA, NAVIN

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/551,189	SKRABAL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Navin Natnithithadha	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance, except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 27-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060608</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-26 have been cancelled. Claims 27-40 have been added. Claims 27-40 are pending.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Applicant's Declaration incorrectly states, "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a)."

### ***Information Disclosure Statement***

3. The information disclosure statement filed 08 June 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in

Art Unit: 3735

the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Priority***

4. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in Austria on 04 January 2003.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

5. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

### ***Specification***

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The

abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

7. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

the required "Sequence Listing" is not submitted as an electronic document on compact disc).

8. The disclosure is objected to because of the following informalities:

The Specification is missing section headings. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 27-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed method is indefinite because the steps of the method are not clearly defined. The Examiner suggests affirmatively stating each method step by inserting "comprising", indentation, and colons.

10. Claims 35-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed device is indefinite because the elements of the device, e.g. "a first plethysmographic sensor device," "a controlling and adjusting device," a first pressure measuring chamber," etc., are not clearly defined. The Examiner suggests affirmatively stating each element of the device by inserting "comprising", indentation, and colons.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 27-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Ogura et al, US 6,796,946 B2 ("Ogura").

Claims 35-40: Ogura teaches a device 10 for the continuous, non-invasive measurement of blood pressure based on the principle of the unloaded arterial wall (see Abstract), comprising:

at least one first pressure cuff (ankle cuff) 20 and one second pressure cuff (upper-arm cuff) 40 of identical or comparable size, the first pressure cuff 20 and the second pressure cuff 40 are attached on at least one first body part or body region (ankle) 12 and one second body part or body region (upper-arm) 14, respectively, containing an artery of identical or comparable size (see fig. 1);

wherein the first pressure cuff and the second pressure cuff include first and second inflatable pressure measuring chambers (rubber bag, see col. 6, ll. 54);

wherein the first pressure cuff 40 being provided with a first plethysmographic sensor device (photoelectric-pulse-wave sensor, see col. 7, ll. 46-59) 56, which is positioned at the distal end of a toe;

wherein the first plethysmographic sensor device 56 connected to a controlling and adjusting device (control device) 36, which controls the pressure in the pressure measuring chamber (ankle rubber bag) of the first pressure cuff 20 using the measuring signal of the plethysmographic sensor device 56 (see fig. 1);

wherein the pressure measuring chamber of the first pressure cuff 20 is connected to a pressure sensor 24 to obtain a pressure measuring signal SP1 (see fig. 1);

wherein the pressure measuring chamber (upper-arm rubber bag) of the second pressure cuff 40 is configured as a reference pressure chamber, which is controlled simultaneously with and independently of the pressure measuring chamber of the first pressure cuff 20 (see fig. 3); and

wherein the pressure measuring chamber of the first pressure cuff 20 and the reference pressure chamber of the second pressure cuff 40 each have separate inlet valves 26 and outlet valves 44 and each connected by separate pressure lines, the pressure in the reference pressure chamber being controlled via the controlling and adjusting device 56 in accordance with a preselectable pressure function (see figs. 5 and 6).

Claims 27-34: Ogura teaches a method for the continuous, non-invasive measurement of blood pressure based on the principle of the unloaded arterial wall, where on at least one first (ankle) 12 and one second (upper-arm) 14 body part or body region, each containing an artery of identical or comparable size, there is positioned a first 20 and a second 40 pressure cuff of identical or comparable size with a first and a



second inflatable pressure measuring chamber (ankle and upper-arm rubber bags), the pressure in the first pressure measuring chamber being controlled in dependence of the measurement signal of a plethysmographic sensor device in such a way that the amplitude of the plethysmographic measurement signal is minimized (see fig. 5), and a pressure measuring signal being obtained from the first pressure measurement chamber, wherein the second pressure measuring chamber is operated as a reference pressure chamber independently of the first pressure measuring chamber (see fig. 3), and wherein the pressure in the reference pressure chamber is controlled in accordance with a preselectable pressure function (see fig. 6), a reference signal being obtained simultaneously with the pressure measuring signal, and the reference signal is used in the interpretation of the pressure measuring signal (see fig. 3), wherein the setpoint (ABI index) of the pressure measuring signal is continuously monitored and/or adjusted by means of the reference signal (see col. 10, ll. 7-43), wherein a physiological or pathological change of the pressure measuring signal is inferred from a change of the mean pressure and/or the amplitude of the pressure measuring signal and a shift of the amplitude maximum of the reference signal or the reference pressure signal in the same direction (ABI index is used to determine the presence of arteriosclerosis).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other prior art references cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Art Unit 3735